

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V

Mayhem Ink LLC

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:42 I/II employer employee relationship

Employer: Mayhem Ink LLC, 59 Main St, Nashua, NH 03060

Date of Hearing: May 12, 2015

Case No.: 50034

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts she is owed \$5,985.00 in unpaid wages for hours worked between November 12, 2014 and March 12, 2015.

She asserts that she was hired because an employee/part owner was going to be terminated. She stopped into the business between November 3 and November 11, 2014, to “check in” on the employee, though her official date of hire was November 12, 2014. On November 12, 2014, she discussed her rate of pay with the employer and agreed on \$15.00 per hour. She completed employment paperwork on November 21, 2014. She did not receive any wages until January 9, 2015, after leaving a detailed accounting of her hours worked for the employer. She received a check for \$500 on January 9 and a check for \$100 on January 14, 2015.

The claimant alleges that the January 12, 2015, email chain presented by the employer has been altered. She states the original emails which she submitted, do not contain the statements “thank you for the \$500, it was not necessary but does help! Again, glad to help as a friend and it has given me something to do while waiting for a placement [foster care]. I was more than happy to help the few hours a week, really appreciate the gas money and “gift” however, if you would like me to continue helping I will require pay. I know you are just starting out and the business is behind but I can’t keep coming down for free. Let me know what you can offer before I start looking elsewhere.” And “okay, I’ll take \$10 per hour but I have to keep looking, definitely worth \$18! that’s what I make at my other consulting jobs, under the table...lol.” The claimant alleges that the emails were altered.

The claimant cut back her hours and days on January 15, 2015, due to lack of payments. She received four more payments for \$100 each on January 24, February 1, February 7, and February 28, 2015.

On March 1, 2015 the claimant submitted a bill to the employer for \$5,945 for hours worked.

The claimant quit on March 12, 2015. The employer left a check for her for \$200.

The claimant alleges a balance of \$5,985 due after payments totaling \$1,200.

The employer argues that initially the claimant was not an employee, but stopped in to help out as a friend. They had been friends through the foster care program. The claimant offered to step in to help oversee an employee/part owner with whom the employer was having issues.

The employer gave the claimant \$500 in January 2015 for helping out. The claimant was very grateful. The employer thought that they were parting ways.

The employer then offered the claimant \$100 per week for ten hours of work, cleaning and administrative duties, at \$10.00 per hour. The claimant accepted. The claimant received five checks for \$100 and a final check for the last two weeks of work of \$200.

The employer alleges that the claimant was not actually performing her duties for the agreed upon ten hours per week, pursuant to the video camera at the shop.

The employer testified that the atmosphere of the shop is very friendly where lots of people hang out, socialize, and look at art work for tattoos. The claimant often times was at the shop knitting, not working.

The employer testified the January 12, 2015, email chains included the additional statements the claimant is alleging were not on the original emails.

The claimant has been paid all wages due per the agreement for ten hours per week at \$10.00 per hour.

FINDINGS OF FACT

This Department must first to determine whether the claimant was an employee or an independent contractor. RSA 275:42 II defines "employee" as, "means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281-A:2, VI(b)(2), (3), or (4), or RSA 281-A:2, VII(b), or a person providing services as part of a residential placement for individuals with developmental, acquired, or emotional disabilities, or any person who meets all of the following criteria:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to completion schedule, range of work hours, and maximum number of work hours to be provided by the person, and in

the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(e) The person holds himself or herself out to be in business for himself or herself or is registered with the state as a business and the person has continuing or recurring business liabilities or obligations.

(f) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(g) The person is not required to work exclusively for the employer.

The Hearing Officer finds that the claimant was an employee of an employer because the claimant meets the definition in the above statute. At the very least, Mayhem Ink LLC (hereafter "the employer") permitted the claimant to engage in employment for gain or profit. Mayhem Ink LLC did not argue the claimant fell under any exemptions to the definition of employee.

The claimant and the employer were acquainted through a foster care program.

The parties completely disagree regarding the claimant's status, rate of pay, hours worked, and wages remaining due.

The claimant passionately tells a credible story. However, she fails to prove by a preponderance of the evidence, as required by law, that she was not paid wages she claims are owed. The employer also tells a story that can be considered credible.

Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence she is due the claimed wages.

DISCUSSION

The claimant has the burden of proof in these matters to provide proof by a preponderance of evidence that her assertions are true.

Pursuant to Lab 202.05 "Proof by a preponderance of evidence" means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The Hearing Officer finds the claimant did not meet her burden in this claim.

DECISION

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that she is owed the claimed wages, it is hereby ruled that the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: May 26, 2015

MJD/kdc